



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2011-0202; FRL-9905-05-Region6]

Approval and Promulgation of Air Quality Implementation Plans; Texas; Revisions to Rules and Regulations for Control of Air Pollution; Permitting of Grandfathered Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions of the Texas State Implementation Plan (SIP) submitted by the State of Texas on July 31, 2002; September 4, 2002; and March 1, 2004. These revisions require that all grandfathered facilities obtain specific permits which include emission control methods to achieve mandated emission reductions, as required, or shutdown; and require that emissions from dockside vessels which result from operations at grandfathered land-based facilities be included in specific permits. The revisions also outline additional permitting procedures for certain grandfathered pipeline equipment located in an ozone nonattainment area. EPA is approving the revisions under the Clean Air Act (CAA or Act), and EPA's regulations.

DATES: This final rule is effective on **[Insert date 30 days from date of publication in the Federal Register]**.

ADDRESSES: EPA has established a docket for this action under Docket ID No. EPA-R06-OAR-2011-0202. All documents in the docket are listed on the <http://www.regulations.gov> Web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically through <http://www.regulations.gov> or in hard copy at the Air Permits Section (6PD-R), Environmental Protection Agency, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. Contact the person listed in the **FOR FURTHER INFORMATION CONTACT** paragraph below to make an appointment.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Barrett (6PD-R), Air Permits Section, telephone (214) 665-7227; e-mail: barrett.richard@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document “we,” “our,” and “us” refers to EPA.

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I. Background

The background for today's action is discussed in detail in our October 25, 2013 proposal (78 FR 63929). In that notice, we proposed to approve revisions to the Texas SIP regarding 30 TAC Chapter 116, subchapter H: "Permits for Grandfathered Facilities" and Subchapter I: "Electric Generating Facility Permits".

We received one comment on our proposal. The comment we received can be accessed from the www.regulations.gov website (Docket No. EPA-R06-OAR-2011-0202). The discussion below addresses the comment we received on our proposed action.

II. Response to Comments

Comment: We received a comment dated November 22, 2013, from the Texas Commission on Environmental Quality (TCEQ) stating that TCEQ does not support the proposed approval of 30 TAC 116.803. TCEQ noted that on September 24, 2013, it withdrew 30 TAC 116.793 through 116.807 from EPA consideration. TCEQ referenced a June 29, 2011 letter from EPA Region 6 to TCEQ. In that letter, EPA returned certain subsections of 30 TAC Chapter 116, subchapter H, specifically 30 TAC 116.779(a)(10), 116.786(c)(2)(B)(ii)(I), 116.794(11), 116.795(f), and 116.799(a). The returned subsections pertain to Texas' implementation of the hazardous air pollution program

under section 112(g) of the Clean Air Act, and are not required to be submitted as a revision to the Texas SIP.

Response: EPA agrees with TCEQ. EPA believes that these sections are no longer before EPA as part of Texas' SIP submittal. EPA is taking no action on 30 TAC 116.779(a)(10), 116.786(c)(2)(B)(ii)(I), and 116.793 through 116.807. TCEQ's comment and the documents referenced in the comment are included in the docket.

III. Final Action

We are approving revisions to the Texas SIP regarding 30 TAC Chapter 116, subchapter H: "Permits for Grandfathered Facilities" and Subchapter I: "Electric Generating Facility Permits". Specifically, we are approving the following revisions to the Texas SIP:

- Addition of 30 TAC Chapter 116, subchapter H, sections 116.770-772, 116.774, 116.775, 116.777, 116.779-781 (except for 116.779(a)(10)), 116.783, 116.785-788 (except for 116.786(c)(2)(B)(ii)(I)), and 116.790, submitted on July 31, 2002.
- Addition of 30 TAC Chapter 116, subchapter H, section 116.778 and Subchapter I, section 116.919, submitted on September 4, 2002.
- Addition of the revisions to 30 TAC Chapter 116, subchapter H sections 116.770 and 116.772, submitted on March 1, 2004.

The revisions require that all grandfathered facilities obtain specific permits which include emission control methods to achieve mandated emission reductions, as required, or shutdown; and require that emissions from dockside vessels which result from operations at grandfathered land-based facilities be included in specific permits. The

revisions also outline additional permitting procedures for certain grandfathered pipeline equipment located in an ozone nonattainment area. We are approving the revisions under section 110, part C, and part D of the CAA, and EPA's regulations.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993);
- does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, this rule does not have tribal implications as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), because the SIP is not approved to apply in Indian country located in the state, and EPA notes that it will not impose substantial direct costs on tribal governments or preempt tribal law.

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal**

Register. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[Insert date 60 days after publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Nonattainment, Ozone, Volatile organic compounds, Reporting and recordkeeping requirements.

Dated: December 20, 2013

Samuel Coleman, P.E.

Acting Regional Administrator, Region 6.

40 CFR Part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart SS – Texas

2. In § 52.2270, the table in paragraph (c) entitled “EPA Approved Regulations in the Texas SIP” is amended under Chapter 116 - Control of Air Pollution by Permits for New Construction or Modification, as follows:

a. Immediately following the entry for § 116.615, by adding an entry for Subchapter H; and

b. Immediately following the entry for § 116.918, by adding an entry for § 116.919.

The additions read as follows:

§ 52.2270 Identification of plan.

(c) * * *

EPA APPROVED REGULATIONS IN THE TEXAS SIP

| State citation | Title/Subject | State approval / submittal date | EPA approval date | Explanation |
|---|----------------------|--|--------------------------|--------------------|
| * * * * * | | | | |
| Chapter 116 (Reg 6)—Control of Air Pollution by Permits for New Construction or Modification | | | | |
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| Subchapter H – Permits for Grandfathered Facilities | | | | |
|--|---|---------|--|--|
| Division 1 – General Applicability | | | | |
| Section 116.770 | Requirement to Apply. | 1/28/04 | [Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins] | |
| Section 116.771 | Implementation Schedule for Additional Controls. | 5/22/02 | [Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins] | |
| Section 116.772 | Notice of Shutdown. | 1/28/04 | [Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins] | |
| Division 2 - Small Business Stationary Source Permits, Pipeline Facilities Permits, and Existing Facility Permits | | | | |
| Section 116.774 | Eligibility for Small Business Stationary Source Permits. | 5/22/02 | [Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins] | |
| Section 116.775 | Eligibility for Pipeline Facilities Permits. | 5/22/02 | [Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins] | |
| Section 116.777 | Eligibility for Existing Facility Permits. | 5/22/02 | [Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins] | |

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|-----------------|--|---------|--|-----------------------------------|
| Section 116.778 | Additional Requirements for Applications for Small Business Stationary Source Permits, Pipeline Facilities Permits, or Existing Facility Permits | 8/21/02 | [Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins] | |
| Section 116.779 | Applications for Small Business Stationary Source Permits, Pipeline Facilities Permits, or Existing Facility Permits. | 5/22/02 | [Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins] | 116.779(a)(10) is not in the SIP. |
| Section 116.780 | Public Participation for Initial Issuance of Pipeline Facilities Permits and Existing Facility Permits. | 5/22/02 | [Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins] | |
| Section 116.781 | Notice and Comment Hearings for Initial Issuance of Pipeline Facilities Permits and Existing Facility Permits. | 5/22/02 | [Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins] | |
| Section 116.783 | Notice of Final Action on Pipeline Facilities Permit Applications and Existing Facility Permit Applications. | 5/22/02 | [Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins] | |
| Section 116.785 | Permit Fee. | 5/22/02 | [Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins] | |

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|--|---|---------|--|--|
| Section 116.786 | General and Special Conditions. | 5/22/02 | [Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins] | 116.786(c)(2)(B)(ii)(I) is not in the SIP. |
| Section 116.787 | Amendments and Alterations of Permits Issued Under this Division. | 5/22/02 | [Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins] | |
| Section 116.788 | Renewal of Permits Issued Under this Division. | 5/22/02 | [Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins] | |
| Section 116.790 | Delegation. | 5/22/02 | [Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins] | |
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| Subchapter I – Electric Generating Facility Permits | | | | |
| * * * * * | | | | |
| Section 116.919 | Additional Requirements for Grandfathered Electric Generating Facility Permit Applications. | 8/21/02 | [Insert date of <u>FR</u> publication] [Insert <u>FR</u> page number where document begins] | |
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[FR Doc. 2013-31560 Filed 01/03/2014 at 8:45 am; Publication Date: 01/06/2014]